

THE ROLE OF BOND COUNSEL

PRESENTED BY

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Origin of Bond Counsel

- Early history
- Need for independence from Issuer
- Federal tax code and securities law developments expand the role

Responsibilities of Bond Counsel

- Ultimate objective = delivery of UNQUALIFIED approving opinion covering:
 - a. validity of debt
 - b. security for debt – repayment source
 - c. tax-exempt status of interest on debt

Responsibilities of Bond Counsel

- Examination of constitutional and statutory basis for transaction
 - a. new legislation
 - b. validation

Responsibilities of Bond Counsel

- Examination of factors affecting tax analysis
 - a. purpose of the financing and use of proceeds
 - b. investment of proceeds
 - c. sources of repayment

Responsibilities of Bond Counsel

- Reconciling legal constraints with Issuer's financial goals:
 - a. spreading capital costs over future taxpayers or ratepayers
 - b. reducing costs or avoiding covenants by refunding or restructuring debt
 - c. modifying debt repayment to reduce or accelerate debt service

Responsibilities of Bond Counsel

- Implementation responsibilities:
 - a. preparation of financing documents
 - b. representation of Issuer in negotiations
 - with credit enhancers
 - with underwriters
 - with swap counterparts and other derivatives providers

Responsibilities of Bond Counsel

- c. assisting Issuer and Underwriters in presentation to bond rating organizations
- d. assisting Issuer in preparing portions (or all) of Official Statement
- e. drafting of continuing disclosure agreement (Rule 15c2-12)
- f. preparation of closing documents

Bond Counsel's Role in Disclosure and Securities Law

- Delivery of "Supplemental Opinion" covering:
 - a. no registration under the '33 Securities Act or qualification under the '39 Indenture Act
 - b. validity of bond purchase contract
 - c. description of bonds and security therefor in offering document is accurate and complete
- Supplemental Opinion falls short of a 10b-5 opinion

Bond Counsel's Role Goes Beyond the Closing Date

- Consulting on post-closing matters:
 - a. interpreting legal documents (in light of subsequent events)
 - b. arbitrage rebate analysis
 - c. continuing disclosure reports (SEC Rule 15c2-12)
 - annual reporting requirements
 - reporting significant events

Conclusion

As the scope and legal complexity of Bond Counsel's role has increased, so has the Issuer's and the public's reliance upon Bond Counsel

